

REMARKS

Claims 1-9, 16-19, 23, 24, 26, 27, 29-34, 36-38, and 40-43 were pending in the present application. By this response, claims 1 and 31 have been amended. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. No new matter has been added.

Rejections under 35 U.S.C. §102(e)

All pending claims were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Khalili (U.S. Patent Pub. No. 2005/0096502).

In response, claim 1 has been amended to recite that the apparatus includes an elongate body "comprising a plurality of links and at least one tensioning wire whereby said elongate body has a first, substantially flexible state and a second, substantially rigid state." These features are supported in the specification at several locations including, for example, at paragraphs 0055-0056 and at FIGS. 11-12.

These features reflect a significant difference between the device described and claimed in the present application and the device described in the Khalili publication. In particular, the Khalili device includes an elongate body (4) that is either rigid (e.g., for laparoscopic applications) or flexible (e.g., for insertion into the stomach). (Khalili, paragraph 0048). But nowhere does the Khalili publication describe an elongate body that is transitionable between a flexible state and a rigid state. Nor does Khalili describe that the elongate body is formed of a plurality of links and at least one tensioning wire, as presently claimed. For this reason, there can be no anticipation of claim 1 by the Khalili publication.

Claims 2-9, 16-19, 23, 24, 26, 27, and 29-30 each depend from claim 1. As a result, these claims are not anticipated by the Khalili publication for the same reasons set forth above.

Claim 31 has been amended to recite an additional method step of "tensioning a tensioning wire extending through at least a portion of said elongate body to thereby substantially rigidize at least a portion of said elongate body." These limitations are supported in the present specification at, for example, paragraphs 0055-0056 and at FIGS. 11-12. There is no corresponding step that is taught or disclosed in the Khalili publication which, as discussed above, is

limited to either a rigid elongate body (4) or a flexible elongate body. Accordingly, claim 31 is not anticipated by the Khalili publication.

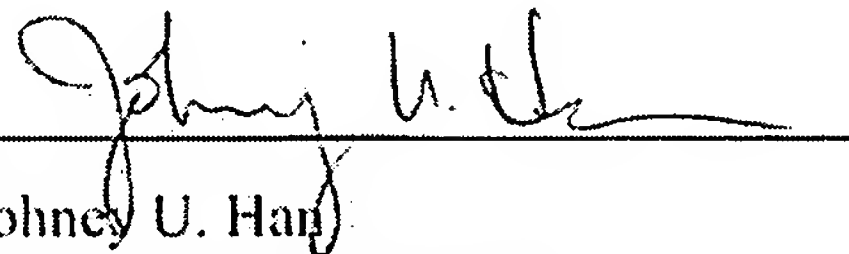
Claims 32-34, 36-38, and 40-43 each depend from claim 31. As a result, these claims are not anticipated by the Khalili publication for the same reasons set forth above.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the appropriate fee and/or petition is not filed herewith and the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with this filing to Deposit Account No. 50-3973 referencing Attorney Docket No. USGINZ00700. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,



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